

CALIFORNIA WILDLIFE CONSERVATION BOARD
GRANT AGREEMENT FOR ACQUISITION OF CONSERVATION EASEMENT

Grantee: **American Land Conservancy**
1388 Sutter Street, Suite 810
San Francisco, CA 94109
Tel: (415) 749-3010
Fax: (415) 749-3011

Successor Grantee: **California Rangeland Trust**
1221 H Street
Sacramento, CA 95814
Tel: (916) 444-2096
Fax: (916) 444-2194

Project Name: Hearst Ranch Conservation Project

Grant Agreement Number: WC-_____

Notices to be delivered to:

For Grantee: American Land Conservancy
Attn: Harriet Burgess
1388 Sutter Street, Suite 810
San Francisco, CA 94109

For Successor Grantee: California Rangeland Trust
Attn: Nita Vail
1221 H Street
Sacramento, CA 95814

For Grantor: Executive Director
Wildlife Conservation Board
1807 13th Street, Suite 103
Sacramento, CA 95814

With courtesy copies to: Director
Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

Pursuant to Chapter 4, Division 2 (commencing with Section 1300) of the California Fish and Game Code and Division 26.5 (commencing with Section 79500) of the California Water Code, the Wildlife Conservation Board ("Grantor" or "WCB") hereby grants to

American Land Conservancy, a California nonprofit public benefit corporation ("Grantee"), the sum of _____ Dollars (\$_____) ("Grant Funds"), upon and subject to the following terms and conditions of this Grant Agreement for Acquisition of Conservation Easement ("Agreement").

TERMS AND CONDITIONS OF GRANT

1. PURPOSE OF GRANT

Grantor is providing the Grant Funds for the purpose of facilitating Grantee's acquisition of a conservation easement (the "Easement") over approximately Eighty Thousand (80,000) acres of land, located in San Luis Obispo County, California. A copy of the unexecuted form of the Easement is attached hereto as **Exhibit A** and made a part hereof by this reference. The real property to be encumbered by the Easement (the "Property") is more particularly described in **Exhibit B**, which is attached hereto and made a part hereof by this reference. The owner of the Property is referred to herein as the "Landowner."

Grantee is acquiring the Easement to achieve protection of the extraordinary ecological, agricultural and scenic values (collectively, the "Conservation Values") of the Property, which Conservation Values are more particularly described in **Exhibit A**, by sustaining in perpetuity a combination of agricultural operations and natural habitats within the Property in accordance with the terms and conditions of the Easement.

2. CONDITIONS PRECEDENT TO GRANT

Grantor's obligation to deposit the Grant Funds into escrow is conditioned upon and subject to satisfaction of all of the following conditions precedent:

2.1. Grantor shall have reviewed and approved all documents pertaining to Grantee's acquisition of the Easement and the transfer of the Easement to the Successor Grantee, including without limitation the Appraisal Report, Hearst Ranch, Rancho Piedras Blancas, prepared by Walter D. Carney, MAI, Hulberg & Associates, Inc., dated January 16, 2004, *[review appraisal,]* preliminary title reports, leases, licenses, permits and other agreements for entry or activities upon or use of the Property or any portion thereof, options, agreements for purchase and sale, escrow instructions and instruments of conveyance. Such review and approval by Grantor shall be timely and shall not be unreasonably withheld.

2.2. Grantor shall have reviewed and approved the Baseline Conditions Report described in Recital F of the Easement, which shall provide baseline maps, photographs and other written documentation of conditions that exist on the Property and that reflects past range management practices, existing development and agricultural and natural resources on the Property, as well as current uses and

improvements. Such review and approval by Grantor shall be timely and shall not be unreasonably withheld. At the time of disbursement of the Grant Funds there shall have been no change to the Property from that described in the Baseline Conditions Report reviewed and approved by Grantor.

2.3. Any outstanding security interests in the Property shall have been terminated or made subordinate to the terms and conditions contained in the Easement.

2.4. Concurrently with Grantee's acquisition of the Easement, (a) Landowner shall convey the West Side Fee Areas **[define]** and the DPR Access Easement **[define]** to the State Department of Parks and Recreation ("DPR"), the Old San Simeon Village Conservation Easement **[define]** to American Land Conservancy and the Caltrans Fee Property **[define]** and the Caltrans Conservation Easement **[define]** to the California Department of Transportation, and (b) Grantee shall assign to Successor Grantee, and Successor Grantee shall assume, in writing, Grantee's rights and obligations as the Grantee of the Easement and as the Grantee under this Agreement. ***[Review note: Will be revised as needed to follow overall transaction]***

2.5. Concurrently with its acquisition of the Easement, Grantee shall provide Grantor with written evidence reasonably satisfactory to Grantor that Grantee is in possession of the funds to which Section 3.7 of this Agreement refers.

3. GRANTEE'S COVENANTS

Grantee hereby covenants and agrees, commencing upon its acquisition of the Easement, as follows:

3.1. Grantee shall manage, maintain, enforce and defend the Easement in a manner that is consistent with this Agreement, including the "Purpose of Grant" set forth in Article 1 and the Audit Policy and Procedures (as defined in Section 3.9), and the terms of the Easement. Any amendment to the Easement shall comply with Section 20 of the Easement. Grantee shall not consent to any amendment of the Easement without the prior written consent of Grantor.

3.2. Subject to the mutual agreement of Grantor, Grantee and Landowner regarding text, design and location, to be reached in accordance with the provisions of Subsection 3(f) of the Easement, Grantee shall post signage on the Property to indicate the participation of Grantor in Grantee's purchase of the Easement; provided, however, that each such sign shall include Grantor's logo shown on **Exhibit C**, which is attached hereto and incorporated herein by this reference.

3.3. Grantee shall recognize the cooperative nature of this project and shall provide credit to the Landowner, the Grantor, and any other contributor on demonstrations, promotional materials, advertisements, publications or exhibits prepared or approved by Grantee referencing this project, as appropriate.

3.4. Grantee shall not assign, convey or otherwise transfer, in whole or in part, any of Grantee's interests, rights or obligations under the Easement, with respect to the whole or any portion of the Property, without the written approval of Grantor except as expressly stated in Section 18 of the Easement, which provisions include the requirements: (a) that any proposed transferee must be willing and financially able to assume by written assignment the obligations and responsibilities imposed under this Agreement; and (b) that Grantee shall consult with WCB in selecting any successor Grantee and the assignments of the Easement and this Agreement shall be subject to Grantor's concurrence that the transferee meets the transferee qualification criteria specified in Section 18 of the Easement; *provided*, that Grantor's concurrence shall not be unreasonably withheld or delayed. Any transfer of Grantee's interest under the Easement shall be effected concurrently with the successor Grantee's written assumption of this Agreement.

3.5. Grantee shall monitor Landowner's compliance with the Easement in accordance with the monitoring protocol for the Property set forth in **Exhibit D**, which is attached hereto and incorporated herein by this reference (the "Easement Monitoring Protocol"). ***[Review note: Monitoring Protocol to include minimum qualifications of Authorized Monitors, as that term is used in Subsection 16(a) of the Easement]***

Grantee shall make available to Grantor, for inspection at Grantee's offices in Sacramento, California (or an alternate location in Sacramento selected by Grantee and reasonably convenient to Grantor, if Grantee does not have a Sacramento office), each monitoring report completed by Grantee under the Easement Monitoring Protocol. Grantee shall also submit annually to Grantor, for public disclosure, a summary monitoring report documenting the occurrence of all monitoring conducted during the preceding twelve (12)-month period and describing and assessing the condition of the Property and the status of Landowner's compliance with the Easement, including the status of any actions taken by Grantee to resolve any compliance issues. Such summary monitoring reports need not include any confidential information concerning the Property. Grantee shall consult with Grantor and Landowner in identifying any such confidential information. For

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the purposes of this Agreement “confidential information” means information about the Property that would properly be withheld from public disclosure under the California Public Records Act, Cal. Gov. Code §6250 *et seq.*

3.6. Grantee shall promptly provide to Grantor a copy of each written notice, demand, request, consent, or approval given by Grantee or Landowner to the other and required under the Easement.

3.7. Grantee has, and shall maintain, sufficient funds to manage, maintain, monitor and enforce the Easement in accordance with this Agreement.

3.8. Grantee shall make available to Grantor, for inspection at Grantee's offices in Sacramento, California (or an alternate location in Sacramento selected by Grantee and reasonably convenient to Grantor, if Grantee does not have a Sacramento office), a copy of each management plan or amendment thereof developed pursuant to the Easement, and shall provide Grantor a reasonable opportunity (not less than 45 days) to review and provide comments and suggestions on such plan prior to its approval by Grantee.

3.9. Grantee shall implement the audit policy and procedures set forth in **Exhibit E** attached hereto and incorporated herein by this reference (the “Audit Policy and Procedures”). Grantee shall not amend the Audit Policy and Procedures without the prior written consent of Grantor, which Grantor may grant or withhold in Grantor's discretion. For the purposes of the provisions of Article 4, below, Grantee's inability to cause a timely audit to be conducted under the Audit Policy and Procedures shall not constitute a breach of this covenant if such inability results from the lack of a consensus in the selection of an independent auditor.

3.10. Grantee shall record, concurrently with close of escrow for the purchase of the Easement, a Notice of Unrecorded Grant Agreement (the “Notice”), incorporating by reference this Agreement and giving public notice that Grantee received funds under this Agreement in order to assist Grantee in acquiring the Easement and that, in consideration for the receipt of the Grant Funds, Grantee has agreed to the terms of this Agreement. The Notice shall be in the form set forth in **Exhibit F** attached hereto and incorporated herein by this reference.

3.11. The Grant Funds shall be used as purchase money only, which excludes escrow and title fees and any other fees and costs incurred to accomplish the transaction and the conveyance of the Easement.

3.12. If the Easement is terminated or extinguished in whole or in part by any means, including, without limitation, exercise of the power of eminent domain, purchase in lieu of condemnation, or sale, exchange or involuntary conversion by judicial proceedings, Grantee shall consult with Grantor to identify use(s) of any award or other compensation or proceeds received by Grantee for the taking or

purchase of its interest in or the sale, exchange or involuntary conversion of, the Easement which are consistent with the Conservation Purpose of the Easement.

3.13. The Easement may not be used as security for any debt.

4. BREACH OF COVENANTS

4.1. In the event that Grantor considers Grantee to have breached any of Grantee's covenants set forth in Article 3, above, or any of Grantee's obligations under Articles 6 – 8 of this Agreement, Grantor shall give written notice to Grantee describing such breach. Such notice shall be deemed given when deposited in the U.S. Post Office or with a reliable overnight courier, postage prepaid, addressed to Grantee, or by personal delivery to Grantee's address set forth above.

4.2. If Grantee does not cure a breach asserted by Grantor within ninety (90) days of notice thereof, or, in the event the breach is not curable within said ninety (90)-day period, if Grantee fails within such ninety (90) days to commence the cure and thereafter diligently pursue it to completion, then Grantor may deem Grantee to be in default under this Agreement ("Default").

5. REMEDIES

In the event of a Default under this Agreement, Grantor shall be entitled to either or both of the following remedies.

- a. Transfer by Grantee of the Easement, and assignment by Grantee of all of Grantee's obligations and responsibilities under this Agreement, as provided in Section 18 of the Easement, together with payment to Grantor of the Payback Amount, as defined below (if such amount is a positive value). The "Payback Amount" shall be calculated by subtracting the Fair Market Value (as defined below) of the Easement at the time of the required transfer from the sum of the Grant Funds, together with interest compounded semi-annually starting from the date of this Agreement to and including the date of reimbursement, at the rate which is being earned at the time of Default on deposits in the State of California's Pooled Money Investment Account, or compounded annually at a rate of six percent (6.0%) from the date of this Agreement to and including the date of Default, whichever is less. The Fair Market Value of the Easement shall be determined by an independent fair market value appraisal, as approved by Grantor and the State Department of General Services, to the extent required by law. For purposes of this Section 5(a), the "Fair Market Value" of the Easement shall mean the difference between (i) the fair market value of the highest and best use of the Property without regard to the Easement (including, without limitation, the restrictions contained therein or the implementation of any such restrictions), and (ii) the fair market value of the Property as restricted by the Easement. If the Fair

Market Value of the Easement, as so determined at the time of the required transfer, exceeds the sum of the Grant plus interest as provided in this section, then no payment shall be owed to Grantor under this provision. If any injury to the Conservation Values protected by the Easement reduces the Fair Market Value of the Easement, and Grantor receives damages under Section 5(b) measured by the cost to restore such injury ("Restoration Damages"), then the sum payable by Grantee under this Section 5(a), if any, shall instead be the Payback Amount minus a sum equal to the amount of Restoration Damages received by Grantor.

- b. Damages measured in the amount reasonably necessary to compensate for injury to the Easement or the Conservation Values protected thereby or for the violation of the terms of this Agreement. In assessing such damages there may be taken into account, in addition to the cost of restoration and other usual rules of the law of damages (including rules limiting double recovery for the same injury), the loss of scenic, aesthetic, or environmental value to the Property. Damages awarded for restoration shall be made available to Grantee for restoration or, at the election of Grantor, retained as damages, in which case the restoration will not be required.

Except as otherwise specifically provided in this Article 5, nothing shall be deemed to limit Grantor's remedies now or hereafter available at law or in equity, including without limitation, the right to seek specific performance of this Agreement.

6. ADDITIONAL TERMS

6.1. Disbursement Procedure. Grantor shall disburse the Grant Funds according to the following procedure. When Grantee is ready to complete acquisition of the Easement, Grantee shall request disbursement of the Grant Funds by sending a letter to the Executive Director of Grantor. The letter shall be signed by an authorized representative of Grantee and shall contain all of the following:

- a. Name and address of Grantee;
- b. Number of Grant Agreement;
- c. Dollar amount of disbursement;
- d. Name, address and telephone number of the title company or escrow holder, and the escrow account number to which the Grant Funds will be disbursed; and
- e. A statement certified by Grantee that all funds (exclusive of the Grant Funds to be provided under this Agreement) needed for completion of the acquisition of the Easement have been secured and have been or will be

deposited to escrow at or about the same date as the requested Grant Funds.

After approval of this Agreement by the Wildlife Conservation Board and upon receipt of the letter from Grantee requesting disbursement of the Grant Funds, Grantor will promptly and timely (estimated to be forty-five (45) working days from the date the request is received) disburse the Grant Funds into the designated escrow account.

6.2. Liability. Grantee agrees to indemnify, hold harmless and defend Grantor, the State of California, its officers, agents, and employees against any and all claims, demands, damages, losses, costs, expenses (including attorneys' and experts' fees) or liability based solely on Grantee's holding of the Easement.

6.3. Amendment. This Agreement may be modified only with the written approval of Grantor and Grantee. No oral understanding or agreement not incorporated in this Agreement shall be binding on any of the parties.

6.4. Expiration. Unless this Agreement has been terminated earlier as provided in Section 6.6, below, it shall expire on the date six (6) months after the date of this Agreement if Grantee has not closed escrow for the acquisition of the Easement on or before that date.

6.5. Term. From and after the close of escrow for the acquisition of the Easement, unless this Agreement has been terminated earlier as provided in Section 6.6, below, this Agreement shall remain in full force and effect.

6.6. Termination.

6.6.1. Prior to the later to occur of (a) Grantor's deposit of the Grant Funds into escrow or (b) Grantee's close of escrow for acquisition of the Easement, either party may terminate this Agreement for any reason or for no reason, by providing the other party with a minimum of fifteen (15) days' written notice of such termination. Upon such termination any Grant Funds previously deposited into Escrow by Grantor shall be immediately returned to Grantor.

6.6.2. Any time after the close of escrow for this acquisition of the Easement, Grantee shall have the right to terminate this Agreement by:

- i. Providing written notice to Grantor of Grantee's election to terminate this Agreement; and
- ii. Reimbursing Grantor the entire sum granted to Grantee pursuant to this Agreement, together with interest compounded semi-

annually starting from the date of this Agreement to and including the date of reimbursement, payable at the rate which is being earned at the time of termination on deposits in the State of California's Pooled Money Investment Account, or compounded annually at the rate of six percent (6.0%) from the date of this Agreement to and including the date of termination, whichever is less.

6.6.3. In the event of a termination of this Agreement in accordance with this Section 6.6, no party will have any rights or remedies against the other parties except as provided herein, and each party shall cooperate with each other party to execute such documents as may be necessary to clear title to the Property encumbered by the Easement, including any Notice of Unrecorded Grant Agreement recorded pursuant to this Agreement.

6.7. Authorization. This Agreement shall be deemed executed and effective when signed by an authorized representative of each party and then received in the respective offices of Grantee, Successor Grantee and Grantor. An authorized representative of each of Grantee, Successor Grantee and Grantor shall sign five (5) originals of this Agreement. Grantee and Successor Grantee shall each receive one (1) completely executed original and Grantor shall receive three (3) completely executed originals.

6.8. Designee. This Agreement shall be binding upon Grantee and all designees, successors and assigns of Grantee as holder of the Easement. All references herein to "Grantee" are intended to refer to Grantee or its designee, successor or assignee as may be approved by the Grantor to the extent such approval is required under this Agreement. References to "Grantee" shall be deemed to refer to Successor Grantee upon Successor Grantee's acquisition of the Easement.

6.9. Assignment to and Assumption by Successor Grantee. Grantee and Successor Grantee have informed Grantor that Grantee intends to assign, and Successor Grantee intends to assume, the obligations of Grantee under the Easement and this Agreement concurrently with the close of escrow of Grantee's acquisition of the Easement. Grantor hereby approves the assignment to and assumption by California Rangeland Trust, a California non-profit public benefit corporation, of (a) all of Grantee's interests, rights and obligations under the Easement, and (b) all of Grantee's obligations and responsibilities imposed under this Agreement; *provided*, that at the time of such assignments California Rangeland Trust shall be a "qualified organization" as defined by Section 170(h)(3) of the Internal Revenue Code and eligible to hold the Easement pursuant to Section 815.3 of the California Civil Code; *provided, further*, that the Board of Directors of California Rangeland Trust shall have approved the assignments and assumptions. By executing this Agreement, Successor Grantee agrees to observe and be bound by the obligations, responsibilities and covenants of Grantee under this Agreement.

6.10. Legal Costs. If either party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any arbitration for any relief against the other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in taking such action, bringing such suit and/or enforcing any judgment granted therein.

6.11. Disclaimer. Grantee acknowledges that Grantor has not made and is not making any representation or warranty as to the tax treatment of the Landowner's sale or Grantee's acquisition of the Easement.

7. AUDIT

Grantee shall maintain complete and accurate records of its actual project costs and shall retain said records throughout the term of this Agreement and for a period of three (3) years after final disbursement. During such time, said records shall be made available to the State of California for audit purposes during normal business hours. Expenditures not documented, and expenditures not allowed under this Agreement or otherwise authorized by Grantor shall be borne by Grantee. The audit shall be confined to those matters connected with this Agreement, including but not limited to, administration and overhead costs.

8. UNION ORGANIZING

Grantee, by signing this Agreement, hereby acknowledges the applicability to this Agreement of Government Code Sections 16645 through 16649. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

8.1. No state funds disbursed by this Grant will be used to assist, promote or deter union organizing;

8.2. Grantee shall account for state funds disbursed for a specific expenditure by this Grant, to show those funds were allocated to that expenditure;

8.3. Grantee shall, where state funds are not designated as described in 8.2 above, allocate, on a pro-rata basis, all disbursements that support the grant program;

8.4. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

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The signature of the Executive Director certifies that at the Board meeting held on _____, 2004, the Wildlife Conservation Board authorized the award of an acquisition grant to Grantee as provided herein.

Certified resolutions of the Board of Directors of Grantee and Successor Grantee, respectively, are set forth in **Exhibit G** attached hereto and incorporated herein by this reference, showing that the President of Grantee and the Executive Director of Successor Grantee, respectively, has been duly authorized to execute this Agreement on behalf of Grantee or Successor Grantee, as applicable.

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This Agreement is made and entered into this ____ day of _____, 2004, in the State of California, by and between the Wildlife Conservation Board, as Grantor, American Land Conservancy, as Grantee and California Rangeland Trust, as Successor Grantee, each of which does hereby agree to the terms and conditions referenced on pages 1 through 12, along with Exhibits A through G, of this Agreement.

STATE OF CALIFORNIA
WILDLIFE CONSERVATION BOARD

AMERICAN LAND CONSERVANCY,
a California nonprofit public benefit
corporation

By: _____
Al Wright

By: _____
Harriet Burgess

Title: Executive Director

Title: President

Date: _____

Date: _____

CALIFORNIA RANGELAND TRUST,
a California nonprofit public benefit
corporation

By: -----
Nita Vail

Title: Executive Director

Date: _____